IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 11604 of 1995

Between:

Vankadara Nageswara Rao
Aswaraopet Road Jangareddygudem
W.G.Dist,A.P

..... PETITIONER

AND

1 The Nayvelli Lignite Corporation Ltd., (A Govt of India Enterprises) rep.by its General Manager, Neyveli, Tamilnadu
2 M/s.Madasu Venkteswara Rao & sons Rep.by its Managing Partner Madasu Venkateswara Rao, Main Road Tadepalligudem
W.G.Dist A.P

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, in the nature of a Writ of Mandamus or any other appropriate writ, direction or order directing the 1st respondent to forthwith return to the petitioner the amount of Rs.2,00,000 covered by DD.No.114616, dt:23-8-1994, issued by the Andhra Bank, Jagareddygudem,in fafour of the 1st respondent which was encashed by the 1st respondent,together with exchange charges and interest at 24% per annum with quarterly rests from 23-8-1994 and Rs.1,50,000 towards compensation and pass

Counsel for the Petitioner:MR.E.MANOHAR, Advocate

Counsel for the Respondent No.1: Mr.B.Adinarayana Rao, Advocate

The Court made the following :

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ORDER:

The petitioner, doing business in fertilizers, has filed this Writ Petition, seeking Writ of mandamus, or any other appropriate Writ, or direction or order, directing the first respondent forthwith to return to the petitioner the amount of Rs.2,00,000/- covered by Demand Draft No. 114616, dated 23-8-1994 issued by the Andhra Bank, Jangareddygude , together with exchange charges, interest at 24% per annum with quarterly rests and compensation of Rs.1,50,000/-.

The first respondent, Neyveli Lignite Corporation Limited, a Government of India Enterprise, is the producer of fertilizer, namely Neyveli Urea. The second respondent was appointed as a stockiest to market the said product of the first respondent-Company. The petitioner, which is also engaged in the business of fertilizers, has purchased Demand Draft bearing No.114616, dated 23-8-1994 for an amount of Rs.2,00,000/-, for purchase of 60 Metric Tons of Urea manufactured by the first respondent-company, and handed over the same to the second respondent-Stockiest. It is the case of the petitioner that in spite of the said payment for purchase of Urea, neither the fertilizer was supplied against the said payment, nor the said amount was returned by the respondents. The petitioner claiming dealer of the said fertilizer, on the ground that in spite of several notices, the respondents have neither delivered the stock nor refunded the amount, has come up with this Writ Petition seeking relief under Article 226 of the Constitution of India for issuance of directions to the respondents for payment of the amount covered by the said Demand Drafts together with interest.

Counter affidavit is filed on behalf of the first respondent-Corporation. Though there is appearance on behalf of the second respondent also, but, no counter affidavit is filed.

As stated in the counter affidavit, the case of the first respondent-Corporation is as

follows.

It is stated that the first respondent-Corporation is a Government of India Enterprise, under the ministry of Coal. The first respondent-Corporation had appointed stockiests at various places in State of Andhra Pradesh for selling Urea. The stockiest receives Urea from the fertilizer factory of the first respondent and transport the same to the stock points and stores it in the hired Godowns. The stockiest shall distribute the same to the dealers or any other party as specified by the first respondent-Corporation. The stockiest shall collect the sale proceeds from the dealers and remit the same to the Corporation by way of Demand Drafts within thirty days from the date of sale. The first respondent-Corporation would maintain running account with the stockiest and when ever stocks delivered to the stockiest, it will be debited to the account of the stockiest and on remitting the amount, credit would be given to the account. Further, it is stated that there were outstanding dues from the second respondent to the tune of Rs.85.03 lakhs by 1-7-1994; as such, supply to the second respondent was suspended and the second respondent was insisted to clear the outstanding due amount. Further, it is stated, in response to such demand, the second respondent has remitted Demand Drafts for the value of Rs.8.10 lakhs in July, 1994, and, Rs.25.49 lakhs in August, 1994, which was adjusted to the account of the second respondent by giving due credit. The said Demand Drafts were obtained in the name of the Corporation, but, there was no indication of the persons who had obtained the Demand Drafts. It is further stated that as per the procedure, stockiest is expected to remit the money only for the goods already sold. Further, while denying that the petitioner is a dealer, it is stated that principal certificate was issued to the petitioner only for the purpose of obtaining licence from the competent authority as provided under the Fertilizer Control Order, but, at the same time, it is stated, the petitioner was not appointed as dealer to deal with the fertilizers of the first respondent-Corporation. Further, it is pleaded that there was no privity of contract between the first respondent and the petitioner, and, if any sums are received by way of Demand Drafts by the second respondent, then the first respondent is not responsible for payment of the same.

It is submitted by the learned Senior Counsel, Sri E.Manohar, appearing for the petitioner that as far as the first respondent is a Government enterprise, which has en-cashed the Demand Drafts obtained by the petitioner; in that view of the manner, it is obligatory on its part either to supply stock or to refund the money. It is further submitted that as much as the said Demand Drafts were obtained under the Open Loan Account, the petitioner had suffered huge loss on account of interest accrued on such loan; in that view of the matter, the petitioner is also entitle for interest apart from principal amount covered by the Demand Drafts. The learned Counsel for the petitioner has placed reliance on the judgments of the Supreme Court in the cases of *M/s.Hindustan Sugar Mills Vs. The State of Rajasthan*, *ABL International Ltd Vs. Export Guarantee Corporation of India Limited*, and, *M/s. Hyderabad Commercials Vs. Indian Bank.*

On the other hand, it is submitted by Sri B.Adinarayana Rao, the learned Counsel for the first respondent-Corporation that the petitioner is not a dealer of the first respondent-Corporation and, more over there is no privity of contract between the petitioner and the first respondent-Corporation; in that view of the matter, the petitioner cannot seek any direction for refund of the amount as prayed for. Further, it is stated that as a stockiest, the second respondent was drawing stocks by remitting the amount from time to time, and the amounts covered by Demand Drafts were given by the second respondent, which amounts were adjusted in the running account between the first respondent-Corporation and second respondent; in that view of the matter, no case is made out for issuing direction for refund of the amount as prayed for.

Having regard to the above said submissions, in this case, it is to be seen, though the petitioner has claimed as dealer, but the same is denied by the first respondent. The principal certificate is issued by the first respondent-Corporation, but the same is only for the purpose of obtaining retail licence under the provisions of the Fertilizers Control Order; as such, the same cannot be pleaded to be appointed as dealer of the first respondent-Corporation. Though it is the case of the petitioner that he has purchased the Demand Drafts in the name of the first respondent-Corporation and handed over to the second respondent, but at the same time, it is to be seen, it is the case of the first respondent that the second respondent is the

stockiest having running account with them, and, when ever stocks delivered to the stockiest, it will be debited to the account of the stockiest and on remitting the amount, credit would be given to the account. It is the case of the first respondent that there were outstanding dues more than Rs.85.00 lakhs from the second respondent and the amounts paid through the Demand Drafts were adjusted towards outstanding dues from the account of the second respondent. More over, though appearance is made on behalf of the second respondent, no counter affidavit is filed to know whether any supply of fertilizers was made as against Demand Drafts, which are the subject matter of the Writ Petition. In absence of any stand of the second respondent and, in view of the stand of the first respondent in the counter affidavit that there is no privity of contract between the first respondent and the petitioner, no direction can be issued to the first respondent for return of the amount in the petition under Article 226 of the Constitution of India. Having regard to the issue involved in this Writ Petition, which is specifically of civil in nature, and, various factual disputes, which have arisen for consideration, the same can be adjudicated in appropriate civil proceedings, but, the same is no ground for issuance of directions to the first respondent for refund of money with interest as claimed. Though it is the case of the petitioner that it has purchased Demand Drafts in the name of the first respondent to buy fertilizers, but admittedly the said Demand Drafts are handed over to the second respondent, as such, there is no contractual obligation directly between the petitioner and the first respondent to supply stocks. In absence of contractual obligation by the first respondent with the petitioner and in view of the stand of the first respondent that the normal practice was, to recover the amounts from the stockiests only after supply of stocks, and, further, in view of the stand of the first respondent in the counter affidavit that, the first respondent is not accountable to the petitioner in absence of privity of contract between them, it is not possible to decide, that the amount paid through Demand Drafts is on account of supply of fertilizers already made to the second respondent or for the future purchases on the order placed by the writ petitioner. The said aspect can be gone into in appropriate civil proceedings; as such, relief sought cannot be granted in the petition under Article 226 of the Constitution of India. Though the learned Counsel for the petitioner has placed reliance on the judgments of the Supreme Court, referred to above, but, they do not apply to the facts of the case on hand. In that view of the matter, I do not find any merit in the Writ Petition.

The Writ Petition is accordingly dismissed. No order as to costs.

----------February, 2005.

Msnr.

1. The General Manage,r The Nayvelli Lignite Corporation Ltd., A Govt of India Enterprises, , Neyveli, Tamilnadu
2. 2. Two CD copies.